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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 671

THE BIBB COUNTY BOARD OF EDUCATION, ELLINGTON P. JONES, HENRY BOLDING, BRITT COX, C. E. HORNSBY, JR., and FRANCIS B. PRATT,

Appellants,

—v.—

ANTHONY T. LEE and HENRY A. LEE, by Detroit Lee and Hattie M. Lee, their parents and next friends; PALMER SULLINS, JR., ALAN D. SULLINS and MARSHA MARIE SULLINS, by Palmer Sullins and Della D. Sullins, their parents and next friends; GERALD WARREN BILLES and HELOISE ELAINE BILLES, by I. V. Billes, their father and next friend; WILLIE M. JACKSON, JR., by Mabel H. Jackson, his mother and next friend; WILLIE B. WYATT, JR., and BRENDA J. WYATT, by Willie B. Wyatt and Thelma A. Wyatt, their parents and next friends; NELSON N. BOGGAN, JR., by Nelson Boggan, Sr., and Mamie Boggan, his parents and next friends; WILLIE C. JOHNSON, JR., BRENDA FAYE JOHNSON and DWIGHT W. JOHNSON, by Willie C. Johnson and Ruth Johnson, their parents and next friends, and WILLIAM H. MOORE and EDWINA M. MOORE, by L. James Moore and Edna M. Moore, their parents and next friends,

—and—

UNITED STATES OF AMERICA,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

MOTION TO AFFIRM

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Appellees Anthony T. Lee, *et al.*,[1] respectfully move the Court, pursuant to Rule 16(1)(c) of the Rules of the

[1] Appellees Lee, *et al.* are the original plaintiffs in the case of *Lee* v. *Macon County Board of Education*, 267 F. Supp. 458 (M.D. Ala. 1967), on appeal here, sub nom. *Wallace* v. *Lee*, No. 489—out of which the instant proceeding arose. On behalf of the class of

Court, to affirm the judgment below, because the questions presented "are so unsubstantial as not to need further argument."

Since appellants have omitted the argument portion of their jurisdictional statement,[2] appellees must necessarily guess as to the nature of their arguments. However, extrapolating arguments from the "questions presented" portion of the jurisdictional statement, one finds nothing of substance.

First, appellants raise a venue objection, citing 28 U. S. C. §1391. That objection is squarely met by 28 U. S. C. §1392(a).

Second, appellants raise an objection as to joinder, citing Rule 20, F. R. Civ. P. Not only was joinder permissible under Rule 20, but it was probably required under Rule 19(a), since, subsequent to the entry of the order in *Lee* v. *Macon County Board of Education*, 267 F. Supp. 458 (M. D. Ala. 1967) on appeal here, sub nom. *Wallace* v. *Lee*, No. 489, the joinder of appellants became necessary to afford appellees complete relief. The district court in the main case antici-

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all Negro schoolchildren in Alabama, they filed the supplemental complaint and motion requesting the court below to order the state-wide desegregation plan now in effect in Alabama (see 267 F. Supp. at 461-62). Thus they clearly are appellees here pursuant to Rule 10(4), despite their omission by appellants from the jurisdictional statement. In the main case, No. 489, appellees Lee, *et al.* have heretofore filed an opposition to an application for stay pending appeal, *Wallace* v. *Lee*, 387 U. S. 916 (1967), and a motion to affirm.

[2] This omission appears to be a violation of Rule 13(2), which requires that a jurisdictional statement comply in *all* respects with Rule 15; Rule 15(1)(f) requires that the jurisdictional statement contain "a statement of the reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution."

pated that certain recalcitrant local school boards might refuse to comply with the Court's school desegregation requirements and might later need to be joined in the action. The Court observed (267 F. Supp. at 479):

> We are dealing here with state officials, and all we require at this time is that those officials affirmatively exercise their control and authority to implement a plan on a state-wide basis designed to insure a reasonable attainment of equal educational opportunities for all children in the state regardless of their race. It may be that in some instances a particular school district will need to be brought directly into the litigation to insure that the defendant state officials have implemented this Court's decree and that the state is not supporting, financially or otherwise, a local system that is being operated on an unconstitutional basis. Hopefully, these instances will be the exception and not the rule.

Fortunately, the Bibb County Board of Education *has* been the exception and not the rule: virtually all the 99 school boards subject to the district court's desegregation requirements have brought themselves into compliance and only a few have had to be joined in the main case.

Third, appellants object to the relief granted against them. Appellants were ordered to adopt a desegregation plan (see Jurisdictional Statement, pp. 20-32) substantially similar to the model decree formulated by the Court of Appeals for the Fifth Circuit in *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836 (5th Cir. 1966), approved *en banc*, 380 F. 2d 385 (5th Cir. 1967), cert. den. sub nom., *Caddo Parish School Board* v.

United States (Nos. 256, 282 and 301), —— U. S. ——, October 9, 1967. This plan has been adopted by virtually all the school districts in the State of Alabama. Yet, 13 years after *Brown v. Board of Education*, 347 U. S. 483 (1954), appellants resist. That resistance no longer raises a substantial federal question.

Respectfully submitted,

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